

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CITY OF HUNTINGTON,

Plaintiff,

v.

AMERISOURCEBERGEN DRUG
CORPORATION, et al.,

Defendants.

Civil Action No. 3:17-01362

CABELL COUNTY COMMISSION,

Plaintiff,

v.

AMERISOURCEBERGEN DRUG
CORPORATION, et al.,

Defendants.

Civil Action No. 3:17-01665

**DEFENDANTS' RESPONSE TO NON-PARTY WEST VIRGINIA PUBLIC
EMPLOYEES INSURANCE AGENCY'S RENEWED MOTION TO QUASH
SUBPOENAS**

Defendants McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Drug Corporation (collectively, "Defendants") respectfully request that the Special Master¹ deny the West Virginia Public Employees Insurance Agency's ("PEIA") Renewed Motion to Quash Subpoenas ("Renewed Motion"), filed May 15, 2020 (Dkt. No. 420). PEIA filed its original motion to quash the document and testimony subpoenas served on it on March 30, 2020 (Dkt. No. 260). In a telephonic conference before the Special Master on April 17, 2020, PEIA and

¹ The Court referred the motion at issue to the Special Master on May 17, 2020.

Defendants agreed that no ruling was necessary given the progress Defendants and PEIA had made in their negotiations. As Defendants have informed the Court since, subpoena negotiations with PEIA are productive and appear to be nearing resolution. *See* Dkt. No. 436 at 25–26. Defendants believe that continues to be true today and that PEIA will exert its best efforts to comply with Defendants’ narrowed document requests by the June 12, 2020 document discovery deadline.

Defendants do not believe that PEIA’s motion raises any issue for the Special Master to resolve at this time. Instead, PEIA filed its motion “to protect its interests” (Dkt. No. 421 ¶ 6), apparently in light of the Court’s May 15, 2020 deadline to file any motions regarding outstanding discovery disputes (Dkt. No. 410). This procedure is similar to the one that Defendants used—with the Special Master’s approval—in their omnibus motion to compel third-party discovery, which Defendants asked to be held in abeyance. Dkt. Nos. 435, 436. Defendants respectfully request that PEIA’s renewed motion to quash similarly be held in abeyance, if not denied.

Should PEIA seek a ruling now, Defendants incorporate in this response their response to PEIA’s original motion to quash (Dkt. No. 280).

Further, since the filing of the Renewed Motion, Defendants and PEIA have come to an agreement as to the scope of the claims data to be produced, and PEIA has pledged to produce the requested data by the document discovery deadline. *See, e.g.*, Ex. A, May 19 e-mail from A. Ellis to J. Wakefield. Defendants also do not believe that there is any remaining dispute as to the other documents sought from PEIA in Defendants’ narrowed requests; Defendants understand that PEIA has certain responsive documents, including organizational charts and insurance plan documents, and will continue to investigate whether other responsive documents exist and meet and confer with Defendants on any issues of scope.

Thus, because any remaining issues with respect to document productions are in the process of being resolved through continued negotiations, Defendants respectfully request that the Special Master deny PEIA's Renewed Motion or, alternatively, hold it in abeyance.

Respectfully submitted,

McKesson Corporation

By Counsel:

/s/ Jeffrey M. Wakefield

Jeffrey M. Wakefield (WVSB #3894)

Jason L. Holliday (WVSB #12749)

FLAHERTY SENSABAUGH BONASSO PLLC

P.O. Box. 3843

Charleston, WV 25338-3843

Tel: (304) 345-0200

jwakefield@flahertylegal.com

jholliday@flahertylegal.com

/s/ Carol Dan Browning

Carol Dan Browning

Stites & Harbison, PLLC

400 West Market Street, Suite 1800

Louisville, Kentucky 40202

Tel: (502) 587-3400

Fax: (502) 587-6391

cbrowning@stites.com

/s/ Timothy C. Hester

Timothy C. Hester

Mark H. Lynch

Christian J. Pistilli

Laura Flahive Wu

COVINGTON & BURLING LLP

One CityCenter

850 Tenth Street NW

Washington, DC 20001

Tel: (202) 662-5324

thester@cov.com

mlynch@cov.com

cpistilli@cov.com

lflahivewu@cov.com

AmerisourceBergen Drug Corporation

By Counsel:

/s/ Gretchen M. Callas

Gretchen M. Callas (WVSB #7136)
JACKSON KELLY PLLC
Post Office Box 553
Charleston, West Virginia 25322
Tel: (304) 340-1000
Fax: (304) 340-1050
gcallas@jacksonkelly.com

/s/ Robert S. Nicholas

Robert A. Nicholas
Shannon E. McClure
REED SMITH, LLP
Three Logan Square
1717 Arch Street, Suite 3100
Philadelphia, PA 19103
Tel: (215) 851-8100
Fax: (215) 851-1420
rnicholas@reedsmith.com
smcclure@reedsmith.com

Cardinal Health, Inc.

By Counsel:

/s/ Steven R. Ruby

Brian A. Glasser (WVSB #6597)
Steven R. Ruby (WVSB #10752)
Raymond S. Franks II (WVSB #6523)
BAILEY GLASSER LLP
209 Capitol Street
Charleston, West Virginia 25301
Tel: (304) 345-6555
Fax: (304) 342-1110
bglasser@baileyglasser.com
ruby@baileyglasser.com
rfranks@baileyglasser.com

/s/ Enu Mainigi

Enu Mainigi
F. Lane Heard
Ashley W. Hardin
WILLIAMS & CONNOLLY LLP
725 Twelfth Street NW
Washington, DC 20005
emainigi@wc.com
lheard@wc.com
ahardin@wc.com